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UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DISVISION

In re:

**PG&E CORPORATION,**

Debtor.

Tax I.D. No. 94-3234914

Case Nos. 19 - \_\_\_\_ (\_\_\_\_)  
19 - \_\_\_\_ (\_\_\_\_)

Chapter 11

**MOTION OF DEBTORS PURSUANT TO 11 U.S.C.  
§§ 105(a), 363(b), AND 507(a)(7) AND FED. R. BANKR.  
P. 6003 AND 6004 FOR INTERIM AND FINAL  
ORDERS (I) AUTHORIZING DEBTORS TO  
(A) MAINTAIN AND ADMINISTER CUSTOMER  
PROGRAMS, INCLUDING PUBLIC PURPOSE  
PROGRAMS, AND (B) HONOR ANY PREPETITION  
OBLIGATIONS RELATING THERETO; AND  
(II) AUTHORIZING FINANCIAL INSTITUTIONS TO  
HONOR AND PROCESS RELATED CHECKS AND  
TRANSFERS**

In re:

**PACIFIC GAS AND ELECTRIC  
COMPANY,**

Debtor.

Tax I.D. No. 94-0742640

Date:  
Time:  
Place:

1 PG&E Corporation (“**PG&E Corp.**”) and Pacific Gas and Electric Company (the “**Utility**”), as  
2 debtors and debtors in possession (collectively, “**PG&E**” or the “**Debtors**”) in the above-captioned  
3 chapter 11 cases (the “**Chapter 11 Cases**”), hereby submit this Motion (the “**Motion**”), pursuant to  
4 sections 105(a), 363(b), and 507(a)(7) of title 11 of the United States Code (the “**Bankruptcy Code**”)  
5 and Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”),  
6 requesting interim and final authority, in the ordinary course of business and consistent with past  
7 practices, to (a) maintain and administer their Customer Programs (as defined below) including the  
8 (i) Deposit and Reimbursement Programs (as defined below), (ii) Public Purpose Programs (as defined  
9 below), (iii) Environmental Cleanup Programs (as defined below), (iv) Third-Party Programs (as defined  
10 below), (v) GHG Credit Programs (as defined below), and (vi) Customer Support Programs (as defined  
11 below), and (b) pay and otherwise honor all obligations relating to each of the foregoing, whether arising  
12 prior to, or after, the Petition Date (as defined below), as necessary and appropriate in the Debtors’  
13 business judgment. Additionally, the Debtors seek authority to issue new postpetition checks or effect  
14 new electronic funds transfer requests on account of such obligations to replace any prepetition checks  
15 or electronic funds transfer requests that may be lost, dishonored, or rejected as a result of the  
16 commencement of these Chapter 11 Cases.

17 A proposed form of order granting the relief requested herein on an interim basis is annexed  
18 hereto as **Exhibit A** (the “**Proposed Interim Order**”).

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## **MEMORANDUM OF POINTS AND AUTHORITIES**

## I. JURISDICTION

The Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334, the *Order Referring Bankruptcy Cases and Proceedings to Bankruptcy Judges*, General Order 24 (N.D. Cal.), and Rule 5011-1(a) of the Bankruptcy Local Rules for the United States District Court for the Northern District of California. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

## II. BACKGROUND

On the date hereof (the “**Petition Date**”), the Debtors commenced with the Court voluntary cases under chapter 11 of the Bankruptcy Code. The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee, examiner, or statutory committee has been appointed in either of the Chapter 11 Cases.

Additional information regarding the circumstances leading to the commencement of the Chapter 11 Cases and information regarding the Debtors' businesses and capital structure is set forth in the Declaration of Jason P. Wells, Senior Vice President and Chief Financial Officer of PG&E Corp., filed contemporaneously herewith in support of the Debtors' chapter 11 petitions and related first day relief (the "**Wells Declaration**").

### III. THE CUSTOMER PROGRAMS

As a regulated, investor-owned utility, the bulk of the Debtors' business operations are subject to oversight by the California Public Utilities Commission (the "CPUC"). The complex regulatory and statutory framework within which the Debtors operate mandates that, in the ordinary course of business, the Debtors maintain certain programs and initiatives for the benefit of a customer base that includes, in the aggregate, over 16 million residential and non-residential customers (collectively, the "**Customers**"). As virtually all of such programs are mandated pursuant to state or local laws, federal law, regulations,

1 tariffs, and regulatory decisions,<sup>1</sup> the failure of the Debtors to continue to honor and maintain these  
2 programs would result in noncompliance with such laws, regulations, and tariffs, and could materially  
3 disrupt the Debtors' operations and jeopardize their ability to successfully reorganize. Additionally,  
4 applicable legislation requires that the projected costs associated with several of the programs discussed  
5 herein be funded through various surcharges and fees collected by the Debtors through rates from  
6 Customers and earmarked to pay the costs of such programs. In other words, in many instances the  
7 Debtors act as a conduit for collected funds, which the Debtors pass through to the programs'  
8 beneficiaries and use to pay other program costs.

9 As set forth below and in the Wells Declaration, these programs include the following:  
10 (a) programs made available to and measures taken for Customers in the ordinary course of providing  
11 utility services including the Security Deposit Programs, the MLX Programs, the UG Programs, and the  
12 Other Customer Programs (each, as defined below) (collectively, the "**Deposit and Reimbursement**  
13 **Programs**"); (b) programs designed to advance public policy goals such as local and state energy  
14 efficiency, renewable energy, carbon reduction, and energy conservation (collectively, the "**Public**  
15 **Purpose Programs**"); (c) programs designed to manage the Debtors' environmental cleanup and  
16 nuclear power plant decommissioning efforts (collectively, the "**Environmental Cleanup Programs**");  
17 (d) third-party programs pursuant to which the Debtors invoice Customers on behalf of third parties that  
18 have purchased and provide electricity or natural gas to Customers using the Debtors' transmission and  
19 distribution facilities (collectively, the "**Third-Party Programs**"); (e) greenhouse gas ("GHG")  
20 emissions reduction programs required by the California Air Resources Board that provide certain credits  
21 to customers (collectively, the "**GHG Credit Programs**"); and (f) customer support programs pursuant  
22 to which the Debtors support Customers by engaging contractors and other third parties to complete  
23

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24 <sup>1</sup> Such statutes, regulations, tariffs, and decisions include, without limitation: Cal. Pub. Util. Code  
25 §§ 379, 380.5, 381, 381.1, 382, 399.4, 399.8, 454.55, 454.56, 890-899, 2790, and 8326; Cal. Water  
26 Code § 80110a; PG&E Elec. Rules 6, 7, 9G, 15, 16, 17, 17.1, 17.2, and 20; PG&E Gas Rules 6, 7, 9G,  
27 15, 16, 17, 17.1, and 17.2 (available at <https://www.pge.com/tariffs/index.page>); and California Public  
28 Utilities Commission Decision Nos. 94-05-020, 01-03-073, 06-01-024, 07-11-045, 08-10-036, 10-01-  
022, 14-12-024, 16-01-044, 17-12-022, 18-01-004, 18-06-027, and 18-12-015. See also, the California  
Global Warming Solutions Act of 2006, Cal. Health and Safety Code §§ 38500, *et. seq.*; Low Carbon  
Fuel Standard (LCFS), Cal. Code of Regs. tit. 17, §§95480-95503.

1 certain Customer projects (collectively, the “**Customer Support Programs**” and, all such programs  
2 collectively, including the Deposit and Reimbursement Programs, the Public Purpose Programs, the  
3 Environmental Cleanup Programs, the Third-Party Programs, the GHG Credit Programs, and the  
4 Customer Support Programs collectively, the “**Customer Programs**,” and any and all fees, costs,  
5 reimbursement obligations, credits, refunds, or expenses incurred, whether prior to or after the Petition  
6 Date, in connection with the Customer Programs, the “**Customer Program Obligations**”). Each of the  
7 aforementioned Customer Programs is discussed in further detail below.<sup>2</sup>

8           **A. The Deposit and Reimbursement Programs**

9           **1. The Security Deposit Programs**

10 Pursuant to the Debtors’ security deposit programs, which have been approved by the CPUC and  
11 have the effect of state law<sup>3</sup> (the “**Security Deposit Programs**”), Customers must demonstrate sufficient  
12 creditworthiness before the Debtors begin providing gas and electric services. In some cases, the  
13 existence of a third-party guarantor or a demonstrable ability to pay will satisfy the Debtors’  
14 creditworthiness requirements.<sup>4</sup> In many cases, however, if a potential Customer’s gas and/or electric  
15 services were discontinued in the past due to non-payment, or if a Customer has no previous service  
16 history with the Debtors, the Debtors will require such Customers, pursuant to the Security Deposit  
17 Programs, to provide a security deposit to the Debtors before initiating service (“**Security Deposit**”).  
18  
19

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20           <sup>2</sup> The Debtors are also obligated to perform under other miscellaneous customer-benefiting programs  
21 and services, including, without limitation, certain customer-benefiting programs and obligations  
22 required in connection with settlements entered into by the Debtors and approved by the Bankruptcy  
23 Court in their prior chapter 11 case, such as the payment of certain disputed claims from escrowed  
24 funds and donation of land and land conservation easements to public agencies or non-profit  
conservation organizations. *See In re Pacific Gas & Elec. Co.*, Case No. 01-30923 DM (Bankr. N.D.  
Cal. Apr. 6, 2001) (ECF No. 14272), ¶ 10(xiii) and Ex. A, § 4.15(c). The Debtors intend to continue to  
comply with such obligations.

25           <sup>3</sup> See PG&E Electric Rules 6 and 7; PG&E Gas Rules 6 and 7. All tariffs applicable to the Debtors are  
26 available at <https://www.pge.com/tariffs/index.page>.

27           <sup>4</sup> Certain of the Debtors’ nonresidential Customers provide letters of credit to the Debtors to fulfill  
28 such creditworthiness requirements. In the ordinary course of business, upon discontinuance of service  
and payment of all obligations owed to the Debtors, the Debtors return the letters of credit back to such  
Customers. The Debtors intend to continue such practice in the ordinary course.

In the ordinary course of business, the Debtors refund Security Deposits with accrued interest (the “**Security Deposit Refunds**”) to Customers if (a) a Customer has no more than two past-due bills during the twelve-month period after commencing service and/or has not had service otherwise discontinued for non-payment during such twelve-month period; (b) a Customer voluntarily discontinues service; or (c) a Customer otherwise meets the Debtors’ criteria for creditworthiness and requests the return of a Security Deposit. Once the Debtors determine that the Customer is entitled to a Security Deposit Refund, the deposit is first used to satisfy the Customer’s outstanding bill or credited to the Customer’s open account. The Debtors also issue Security Deposit Refunds in the form of a check or through an automated clearinghouse transfer directly into a Customer’s bank account. Customers may also elect to receive a refund in the form of a credit to another account held with the Debtors.

In 2018, the Debtors issued approximately \$52.3 million in Security Deposit Refunds to approximately 240,000 residential Customers (on average, approximately \$220 per identified residential Customer) and approximately \$41.5 million in Security Deposit Refunds to approximately 20,000 non-residential Customers. As of the Petition Date, the Debtors hold an aggregate of approximately \$181.2 million in Security Deposits. Based on historical averages, the Debtors estimate that they will be obligated to refund or credit on a monthly basis approximately \$5 million in Security Deposit Refunds to approximately 20,000 residential Customers (on average \$250 per identified residential Customer) and approximately \$4 million in Security Deposit Refunds to approximately 1,600 non-residential Customers.

## 2. The MLX Programs

The Debtors have mainline extension and interconnection (“**MLX**”) programs (collectively, the “**MLX Programs**”) approved by the CPUC that are required by law. Generally speaking, an MLX is an electric line or a gas main that is typically installed to provide permanent gas and electricity service to premises that otherwise lack connection to the Debtors’ extensive natural gas and electric network.<sup>5</sup> As used herein, an MLX may also be used to add load capacity to otherwise grid-connected premises in

<sup>5</sup> See PG&E Electric Rules 15 and 16; PG&E Gas Rules 15 and 16.

anticipation of increased energy usage or to interconnect customer generation facilities.<sup>6</sup> The MLX Programs generally work in the following manner: either the Customer builds the MLX and pays for associated construction costs, or the Debtors build the MLX and the Customer provides the Debtors with an up-front deposit corresponding to estimated construction costs. As the Debtors may benefit from an MLX through Customer revenues associated with such MLX over time, the Debtors issue (i) payments to the Customer who built the MLX, and (ii) refunds to Customers who provided the Debtors with up-front deposits (collectively, including refunds of Engineering Advances (as defined below) in excess of remaining project costs, the “**MLX Deposit Refunds**”).<sup>7</sup>

In 2018, the Debtors paid approximately \$55 million in MLX Deposit Refunds (excluding refunds for Engineering Advances) to approximately 2,100 Customers and approximately \$11.1 million in refunds of Engineering Advances to approximately 5,300 Customers. As of the Petition Date, the Debtors hold an aggregate of approximately \$112.7 million in MLX deposits and Engineering Advances. Based on historical averages, the Debtors estimate that they will be obligated to refund or credit on a monthly basis approximately \$4.6 million in MLX Deposit Refunds (excluding refunds for Engineering Advances) to approximately 150 Customers and \$1 million in refunds of Engineering Advances to approximately 440 Customers.

### 3. The Underground Programs

The Debtors undertake programs that are approved by the CPUC and are required by law to convert existing overhead electric distribution facilities to underground (“**UG Programs**”).<sup>8</sup> In order for a project to qualify under the program, the project must meet specific criteria outlined in the Debtors’ Rule 20 tariff. Under the UG Programs, the Debtors undertake projects at the request of governmental entities that cover the costs of the conversions (the “**UG Costs**”). The governmental entities have the option of covering the conversion costs either through direct payment to the Debtors or, more commonly, through the use of work credits that are allocated to communities according to a formula that is set forth

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<sup>6</sup> See PG&E Electric Rule 21.

<sup>7</sup> The Debtors also receive engineering advances when Customers apply for new line extension or relocation projects (“**Engineering Advances**”) which are applied to the cost of the project.

<sup>8</sup> See PG&E Electric Rule 20.

1 in Debtors' tariffs. In 2018, the Debtors expended approximately \$33 million in connection with the  
2 UG Programs. As of the Petition Date, the Debtors estimate that approximately \$5.4 million in UG  
3 Costs owed to third parties in connection with the UG Programs are accrued and unpaid, all of which the  
4 Debtors estimate will come due within thirty (30) days after the Petition Date.

5 **4. The Other Customer Programs**

6 In the ordinary course of business, the Debtors also provide credits to Customers (i) as a result  
7 of corrections in rates, metering and other charges,<sup>9</sup> (ii) in connection with the Debtors' budget billing  
8 plan, which is intended to normalize Customer payments over the course of a year,<sup>10</sup> and the Debtors'  
9 solar tariffs,<sup>11</sup> which compensate Customers for surplus energy delivery, and (iii) to address other similar  
10 Customer concerns and issues (collectively, the "**Other Customer Programs**" and the obligations  
11 related thereto, the "**OCP Costs**"). The Debtors' monthly Other Customer Program activity is irregular.  
12 In the eleven (11) month period ending November 30, 2018, the Debtors incurred monthly OCP Costs  
13 up to approximately \$4 million.

14 **B. The Public Purpose Programs**

15 The Debtors administer, both directly and indirectly, a host of separate Public Purpose Programs  
16 across the Debtors' service area in California pursuant to a series of statutory mandates, including those  
17 set forth in the California Public Utilities Code, and regulatory mandates and decisions issued by the  
18 CPUC and local and regulatory agencies.<sup>12</sup> The Public Purpose Programs are tailored to effectuate public  
19 policies supporting energy efficiency ("EE"), carbon reduction, renewable energy, and energy  
20 management and conservation by (a) providing direct financial incentives (including rebates) to  
21 individuals, businesses, and local governments to install, sell, or manufacture energy efficient and  
22 renewable energy equipment, (b) implementing education and outreach initiatives that promote and

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<sup>9</sup> See PG&E Electric Rules 17, 17.1 and 17.2; PG&E Gas Rules 17, 17.1 and 17.2.

25<sup>10</sup> See PG&E Electric Rule 9G; PG&E Gas Rule 9G.

26<sup>11</sup> See PG&E Electric Rate Schedule NEM2.

27<sup>12</sup> Such statutes and Commission Decisions include without limitation: Cal. Pub. Util. Code §§ 380.5,  
28 381, 381.1, 382, 399.4, 399.8, 454.55, 454.56, 890-899 and 2790; and California Public Utilities  
Commission Decision Nos. 01-03-073, 06-01-024, 07-11-045, 08-10-036, 10-01-022, 14-12-024, 16-  
01-044, 17-12-022, 18-01-004, 18-06-027, and 18-12-015.

1 support the widespread adoption of EE, renewable energy, reductions in GHG emissions, and energy  
2 conservation practices, (c) supporting research and development aimed at improving existing and  
3 developing new EE, clean energy technologies and renewable energy technologies, and  
4 (d) administering and supporting demand response programs which seek to maximize grid-wide  
5 efficiencies through targeted increases and decreases in electricity consumption. A non-exhaustive list  
6 and general description of the types of Public Purpose Programs follows.

### 7           **1.       The Public Purpose Programs Described**

8           The Debtors administer mandated programs that cover nearly every market sector and customer  
9 type, across all technology families, and use a variety of market intervention strategies, including rebates  
10 targeted at manufacturers and distributors. These programs support California’s “Long-Term Energy  
11 Efficiency Strategic Plan,” a framework created by the CPUC that is designed to integrate EE into the  
12 everyday activities of ratepayers, to provide a more integrated EE experience for Customers and to  
13 provide Customers with access to information and greater financing opportunities.

14           Energy Efficiency. The Debtors’ CPUC-mandated EE programs (collectively, the “**EE**  
15 **Programs**”) offer incentives, services, education and tools aimed to assist residential, commercial,  
16 industrial, and agricultural Customers and local government partners in eliminating unnecessary energy  
17 use and saving money. Through strategic energy planning support, technical support services, and  
18 financial support through rebates, incentives, education, and financing options, the EE Programs  
19 empower Customers to better understand, manage, and eliminate unnecessary energy use. A general  
20 description of the types of EE Programs follows.

21           *Energy Efficiency: Residential Programs.* The Debtors administer twelve (12) residential  
22 EE programs (collectively, the “**Residential Programs**”) designed to achieve energy savings for  
23 residential Customers. For example, the Debtors provide rebates to residential Customers who purchase  
24 energy efficient products like washing machines, dishwashers, and water heaters. In addition, the  
25 Debtors offer incentives to Customers who work with contractors to perform home retrofits and who do  
26 air conditioning installation and maintenance. Through the Residential Programs, property owners and  
27 Customers can receive incentives to install efficient equipment in multifamily housing units, ranging  
28 from central systems like boilers to simple lighting fixtures. The Residential Programs offer incentives

1 to manufacturers, distributors, and retailers to manufacture, stock, and sell energy efficient consumer  
2 electronics (such as televisions and computers) and lighting. In addition, the Debtors provide audit and  
3 energy savings equipment installation services to moderate income residential Customers. Through  
4 home energy management tools the Debtors provide residential Customers tools and information to help  
5 them maximize energy savings.

6                   *Energy Efficiency: Commercial Programs.* The Debtors administer a variety of  
7 commercial EE programs (collectively, the “**Commercial Programs**”) that target Customers in new and  
8 existing facilities and in a variety of sectors including healthcare, hospitality, large office, high tech, and  
9 retail. Through the Commercial Programs, the Debtors provide incentives and financing to encourage  
10 investment in energy efficient products and services. Typical commercial EE projects focus on  
11 equipment upgrades in lighting, HVAC, food service, refrigeration, water heating, and general plug  
12 loads. The Debtors also offer strategic energy planning, technical support services, calculation or design  
13 assistance, and benchmarking tools to their commercial Customers. The Debtors deliver this suite of  
14 Commercial EE Programs through a network of trade professionals, third-party partners, and local  
15 government partnerships. The Debtors also offer in-house engineering and project development support  
16 to commercial Customers.

17                   *Energy Efficiency: Industrial Programs.* The Debtors administer a variety of industrial  
18 EE programs (collectively, the “**Industrial Programs**”) that are designed to reduce energy consumption,  
19 lower GHG emissions, and increase Customers’ profitability by lowering energy costs. The Industrial  
20 Programs include rebates, incentives, and financing for efficient equipment and systems; technical  
21 support such as facility audits and energy savings analysis; and strategic energy planning. Typical  
22 industrial EE projects focus on lighting, pumps, fans, motors, boilers, insulation, heat recovery, process  
23 heating, drip irrigation, low pressure sprinkler nozzles, and refrigeration equipment. The Industrial  
24 Programs target various facility types including oil production, lumber and paper mills, cement and  
25 quarries, metals processing, petroleum refineries, chemical industries, assembly plants, and water and  
26 wastewater treatment plants. The Debtors deliver their suite of Industrial Programs through a network  
27 of trade professionals and third-party partners. The Debtors also offer in-house engineering and project  
28 development support to industrial Customers.

1           *Energy Efficiency: Agricultural Programs.* The Debtors administer a variety of  
2 agricultural EE programs (collectively, the “**Agricultural Programs**”) that help agricultural producers  
3 and processors manage energy costs and make informed investments in new energy-saving equipment.  
4 The Debtors offer a full suite of tools to position agricultural Customers to eliminate unnecessary energy  
5 use. Key offerings include rebates, incentives, and financing for efficient equipment and systems;  
6 technical support such as facility audits and energy savings analysis; and pump efficiency education.  
7 The Agricultural Programs target agricultural growers, post-harvest processors, dairies, irrigation  
8 districts/agencies, fruit and vegetable processors, agricultural service providers, wineries, and other  
9 beverage manufacturers. The Debtors deliver their suite of Agricultural Programs through a network of  
10 trade professionals and third-party partners. The Debtors also offers in-house engineering and project  
11 development support to agricultural Customers.

12           *Energy Efficiency: Local, State, and Federal Government (Public Sector) Programs.* The  
13 Debtors administer a variety of EE programs focused on the public sector (collectively, the “**Public**  
14 **Sector Programs**”). Through Debtors’ government and community partnerships, the Debtors  
15 collaborate with public entities to shape EE and sustainability at the local, regional, and statewide levels.  
16 These partnerships aim to meet the needs of local and state governments and schools and educational  
17 institutions to offer comprehensive solutions that are flexible, innovative, and a reflection of the  
18 communities’ needs. The Public Sector Programs also focus on K-12 public schools and offer energy  
19 planning services for public entities interested in benchmarking their facilities and pursuing local energy  
20 reach codes and ordinances. In addition, the Debtors offer a light emitting diode (“LED”) streetlights  
21 program serving public sector customers.

22           *Energy Efficiency: Financing Programs.* The Debtors administer the on-bill financing  
23 program (the “**OBF Program**”) that provides zero-interest loans to help commercial customers invest  
24 in efficient products and pay for these investments through their utility bill. The OBF Program is offered  
25 in conjunction with other EE Programs to stimulate and enable higher levels of customer participation.  
26 Additionally, the Debtors support the California Alternative Energy and Advanced Transportation  
27 Financing Authority (CAEATFA) in the development of statewide finance pilots, which include on and  
28 off-bill financing options.

1                   *Energy Efficiency: Codes and Standards Program.* The Debtors administer the codes  
2 and standards program (the “**C&S Program**”), which saves energy on behalf of ratepayers by  
3 influencing regulatory bodies such as the California Energy Commission and the U.S. Department of  
4 Energy to strengthen EE regulations. The C&S Program conducts efforts to increase compliance with  
5 existing codes, standards, and regulations to ensure that the State of California realizes the savings from  
6 new codes and standards and support local governments that include reach codes as a climate strategy.  
7 The C&S Program also provides for planning and coordination with other California investor-owned  
8 utilities to optimize collaboration, and code readiness activities to prepare for future codes. The C&S  
9 Program advocacy and compliance improvement activities extend to virtually all buildings and  
10 appliances sold in California in support of the state’s climate and energy goals.

11                  *Energy Efficiency: Workforce Education and Training Program.* The Debtors administer  
12 a workforce education and training program (the “**WE&T Program**”), which provides professionals  
13 who design, build, and operate buildings the relevant skills needed to help eliminate unnecessary energy  
14 use in buildings. The WE&T Program provides technical advice to local workforce development  
15 organizations, postsecondary educational institutions, and training programs for various trades. The  
16 Debtors operate three energy centers that offer courses, technical consultations, and events. The centers  
17 include the Pacific Energy Center in San Francisco, which focuses on building design, the Stockton  
18 Energy Training Center, which focuses on workforce training, and the Food Service Technology Center  
19 in San Ramon. Through the WE&T Program, the Debtors work with educational institutions,  
20 community-based organizations and state education agencies to offer energy education to K-12,  
21 community colleges, adult education, and higher education institutions.

22                  *Energy Efficiency: Emerging Technologies Program.* The Debtors administer an  
23 emerging technologies program (the “**ETP**”), which evaluates new and/or promising EE technologies,  
24 showcases these technologies, and facilitates the entry of such technologies to market. Through the ETP,  
25 the Debtors communicate and collaborate with entrepreneurs and technology providers to increase the  
26 supply of EE technology solutions and identify and assesses the performance of emerging EE technology  
27 solutions through lab and field testing and demonstration showcases. The ETP is focused on the  
28 following areas across all customer segments: lighting, HVAC, building shells, energy management

systems, appliances, plug loads, and food services technologies.

Statewide, Marketing and Education. The Debtors serve as the fiscal manager for a joint utility statewide marketing, education, and outreach program that is performed under contracts with third-party advertising and media firms. The statewide marketing, education, and outreach program motivates Customers to take action on EE and energy conservation measures, increases Customer awareness of such measures, and facilitates Customers' ability to act and incorporate technological advances.

Low-Income. The Debtors serve as program administrator for programs aimed at helping income-qualified Customers pay their energy bills. Over 1.4 million Customers are receiving a bill discount through the California Alternative Rates for Energy (CARE) program and Family Electric Rate Assistance Program (FERA) program.

Energy Savings Assistance Program. The Debtors administer the energy savings assistance program which provides income-qualified residential Customers with home energy-saving improvements at no charge. The program supports the EE and weatherization of approximately 100,000 homes per year.

Self-Generation Incentive Program. The Debtors serve as program administrators for the self-generation incentive program (the "SGIP") and provide rebates to Customers and renewable energy providers for the installation of new qualifying technologies that meet all or a portion of the electric needs of a facility. The purpose of the SGIP is to achieve GHG emission reductions, electricity demand reductions, and reduced Customer electricity usage.

California Solar Initiative and Other Solar Programs. The Debtors administer California solar initiative and other solar programs by providing financial incentives for installation of qualifying photovoltaic systems for multi-family and single-family affordable housing and solar thermal technology. These programs include without limitation, the California Solar Initiative Program; the California Solar Initiative Multifamily Affordable Solar Housing Program; the California Solar Initiative Thermal Program; the Single Family Affordable Solar Housing Program; the Multifamily Affordable Housing Solar Roofs Program; the Net Energy Metering Program; the Community Solar Green Tariff Program; the Disadvantaged Communities—Green Tariff Program, and the Disadvantaged Communities—Single Family Solar Homes Program. Under these programs, the Debtors provide

1 financial incentives and other customer assistance including through a contract with a third-party  
2 administrator for the installation of solar energy systems on qualifying properties throughout California.  
3 The goal of the programs is to encourage the development and installation of solar systems including in  
4 California's disadvantaged communities.

5 Demand Response Programs. The Debtors administer demand response programs designed to  
6 enable Customers to contribute to energy load reduction during peak times of demand. Demand response  
7 programs are designed to be both fiscally and environmentally responsible by responding to occasional  
8 and temporary peak demand. The programs offer incentives to businesses that volunteer and participate  
9 by temporarily reducing their energy use when demand could outpace supply.

10 San Joaquin Valley Disadvantaged Communities Pilot Projects. In December 2018, the CPUC  
11 authorized the Debtors and other investor-owned utilities to implement and administer a variety of pilots  
12 and various support programs to provide improved utility services to disadvantaged communities in the  
13 San Joaquin Valley. The Debtors are responsible for certain of these pilots as well as providing credits  
14 and education for impacted customers. The Debtors are also responsible for facilitating the hiring of an  
15 independent administrator to oversee the pilots.

16 Clean Energy Transportation Programs. The Debtors have been authorized to implement multiple  
17 electric vehicle programs, including the "Electric Vehicle Charging Network Program," which will  
18 increase access to charging for electric vehicles within the Debtors' service territory; the "Electric  
19 Vehicle Fleet Ready Program," which serves to build electric vehicle charging infrastructure for 700  
20 sites to support medium and heavy duty vehicle fleets; the "Priority Review Projects  
21 Program," which pilots new methods and projects to promote deployment of electric vehicles; and the  
22 "Electric Vehicle Fast Charge Program," which targets transit corridors and urban areas to provide them  
23 with charging infrastructure that allows electric vehicles to fully charge quickly.<sup>13</sup>

24 Residential Rate Reform. The Debtors implement residential rate plan changes and increase  
25 customer awareness of rate options in preparation for the mandated transition of approximately 2.7  
26 million Customers to "time-of-use" rate plans starting in October 2020 under which energy costs will be

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27  
28 <sup>13</sup> These clean energy transportation programs have been authorized by Decision Nos. 16-12-065, 18-  
01-024 and 18-05-040 of the California Public Utilities Commission.

1 directly related to the time of day energy is used. Customer awareness includes an extensive multi-  
2 media statewide campaign informing Customers of the importance of energy management and the time  
3 of day that energy is used.

4        Mobile Home Park Utility Upgrade Program. The Debtors participate in a program to replace  
5 mobile home park (“MHP”) operated utility systems with direct public utility natural gas and electric  
6 service for MHP residents. The goal of the program is to provide safe, reliable, and clean energy to  
7 MHP residents.

8            **2. Funding and Costs of the Public Purpose Programs**

9        On an annual basis, the CPUC commissions studies of California’s residential and commercial  
10 buildings, equipment and processes, and industrial and agricultural sectors with the objective of  
11 developing energy savings and conservation objectives and determining the annual budget for the Public  
12 Purpose Programs. Following approval by the CPUC, the projected costs associated with the Public  
13 Purpose Programs (the “PPP Costs”) are funded through various surcharges and fees collected by the  
14 Debtors through rates from Customers (the “PPP Funds”).<sup>14</sup> In order to meet the objectives of the  
15 Public Purpose Programs, the CPUC has approved approximately \$950 million in PPP Costs for 2019.  
16 As of the Petition Date, the Debtors estimate that approximately \$131 million in PPP Costs owed to third  
17 parties are accrued and unpaid, all of which the Debtors estimate will come due within thirty (30) days  
18 after the Petition Date.

19        The funds collected, allocated, and distributed by the Debtors on account of the Public Purpose  
20 Programs are typically tracked by the Debtors through regulatory “balancing accounts” required by the  
21 CPUC for legal ratemaking purposes. All costs recorded in these accounts are reserved for the payment  
22 of PPP Costs as approved by the CPUC. Surplus funds remaining in these accounts at the end of the  
23 year are either rolled over and allocated to Public Purpose Programs for the next fiscal year or refunded  
24 to Customers through rate adjustments.

25  
26        <sup>14</sup> For a list of examples of such balancing accounts, see PG&E Advice Letter 5376-E, Annual Electric  
27 True-Up Submittal – Change to PG&E’s Electric Rates on January 1, 2019, filed with CPUC on  
28 September 4, 2018; PG&E Advice Letter 4053-G, Annual Gas True-Up of Gas Transportation  
Balancing Accounts for Rates Effective January 1, 2019, filed with CPUC on December 21, 2018.

1           **C.     The Environmental Cleanup Programs**

2           The Debtors' operations include or have included nuclear power plants, manufactured gas plant  
3 sites, natural gas gathering system sites, natural gas compressor station sites, electric transmission and  
4 distribution facilities, steam-electric power plant sites, and hydroelectric power plant sites. As a result  
5 of current and historical operations, state and federal statutes and agencies such as the Federal  
6 Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), the  
7 Nuclear Regulatory Commission, and the CPUC nuclear safety and cost recovery regulations require the  
8 Debtors to administer and maintain the Environmental Cleanup Programs described below.<sup>15</sup> The  
9 Debtors operate such programs under state and federal regulatory oversight.

10           **1.     The Environmental Cleanup Programs Described**

11           As a necessary part of their business, the Debtors use, or have used, a variety of different  
12 hazardous or radioactive materials in a number of their sites, the cleanup of which is an ordinary and  
13 recurring part of the Debtors' business. In connection therewith, the Debtors (a) evaluate existing and  
14 historical operating sites for potential releases of hazardous materials by performing site investigations  
15 and conducting human health and ecological assessments, and (b) design, implement, and perform  
16 remedial measures at designated sites to address ongoing or potential exposure risks. The Debtors use a  
17 number of third-party environmental contracting and consulting firms in the administration of the  
18 Environmental Cleanup Programs, as well as outside legal firms to provide guidance and direction on  
19 legal and regulatory issues, to manage regulatory and third-party claims with respect to environmental  
20 issues, and to assist in the development of environmental policies.

21           Additionally, the Debtors' routine work includes active decommissioning of the Debtors'  
22 Humboldt Bay nuclear facility and decommissioning planning activities of the Debtors' Diablo Canyon  
23 nuclear facility. Federal law requires all operators of nuclear facilities to create and fund a nuclear  
24 decommissioning trust fund with adequate funds to decommission those facilities such that they present

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26           <sup>15</sup> Such authorities include: Cal. Pub. Util. Code §§ 379, 8325 and 8326, and PG&E's Electric  
27 Preliminary Statement DB (Nuclear Decommissioning Adjustment Mechanism), [https://www.pge.com/tariffs/assets/pdf/tariffbook/ELEC\\_PRELIM\\_DB.pdf](https://www.pge.com/tariffs/assets/pdf/tariffbook/ELEC_PRELIM_DB.pdf); and CPUC Decision 94-05-020, and  
28 PG&E's Electric Preliminary Statement Part S (Hazardous Substance Mechanism), [https://www.pge.com/tariffs/assets/pdf/tariffbook/ELEC\\_PRELIM\\_S%20\(Prelim\).pdf](https://www.pge.com/tariffs/assets/pdf/tariffbook/ELEC_PRELIM_S%20(Prelim).pdf).

1 no risk to public health and safety or the environment when they are removed from service.<sup>16</sup>

2           **2.       Funding and Costs of the Environmental Cleanup Programs**

3           The Debtors collect and recover hazardous substance clean up and litigation costs, net of related  
4 insurance recoveries, as approved by the CPUC. The CPUC allows for the recovery of eligible costs at  
5 CPUC-approved manufactured gas plant sites, federal superfund sites, and other specified sites.  
6 Additionally, the California Public Utilities Code and CPUC decisions and orders require that the  
7 Debtors periodically estimate the costs associated with the Debtors' nuclear decommissioning efforts,  
8 seek CPUC authorization for the funding of such costs, and deposit such funding into externally managed  
9 and segregated nuclear decommissioning trusts (collectively, the "**Decommissioning Trusts**").<sup>17</sup> The  
10 Debtors routinely seek reimbursement from the Decommissioning Trusts for prudent decommissioning  
11 expenditures approved by the CPUC.

12           Following approval by the CPUC, the projected costs associated with the Environmental Cleanup  
13 Programs (the "**ECP Costs**") are funded through various surcharges and fees collected by the Debtors  
14 through rates from Customers (the "**ECP Funds**"). In order to meet the objectives of the Environmental  
15 Cleanup Programs, the CPUC has approved \$130.8 million in ECP Costs for 2019. As of the Petition  
16 Date, the Debtors estimate that approximately \$39.4 million in ECP Costs owed to third parties are  
17 accrued and unpaid, all of which the Debtors estimate will come due within thirty (30) days after the  
18 Petition Date.

19           The funds collected, allocated, and distributed by the Debtors on account of the Environmental  
20 Cleanup Programs are tracked by the Debtors through regulatory "balancing accounts" or ratemaking  
21 adjustments required by the CPUC for legal ratemaking purposes. The ratemaking accounts and  
22 mechanisms which recover the costs associated with these activities include the "Hazardous Substance  
23 Mechanism's Hazardous Substance Cost Recovery Account" and the "Nuclear Decommissioning

24  
25  
26  
27           <sup>16</sup> 10 CFR 50.82 and 50.75.

28           <sup>17</sup> See Cal. Pub. Util. Code §§ 8325-26.

1 Adjustment Mechanism.”<sup>18</sup> All costs recorded in these accounts are reserved for the payment of ECP  
2 Costs as approved by the CPUC. Surplus funds remaining in the Hazardous Substance Cost Recovery  
3 Account at the end of the year are either rolled over and allocated to Environmental Cleanup Programs  
4 for the next fiscal year or refunded to Customers through rate adjustments.

5 **D. The Third-Party Programs.**

6 **1. The Third-Party Programs Described**

7 Under programs authorized by statute and CPUC decisions, the Debtors act as servicing and  
8 billing agents to third parties (*e.g.*, private utility providers) that sell electricity or natural gas directly to  
9 retail customers using the Debtors’ transmission and distribution facilities.<sup>19</sup> Under such arrangements,  
10 the Debtors send invoices to, and collect money from, Customers on behalf of the third parties and then  
11 remit such payments to the third parties.

12 The programs under which such third parties provide this electricity or natural gas are known as  
13 Community Choice Aggregation, Direct Access, and Core Gas Aggregation. The third-party entities  
14 providing service under these programs are known as Community Choice Aggregators (“CCAs”),  
15 Energy Service Providers (“ESPs”), and Core Transport Agents (“CTAs”), respectively. In addition,  
16 the Debtors act as billing agent for the California Department of Water Resources (“DWR”), which has  
17 purchased energy on behalf of Customers and recovers financing costs from Customers using the  
18 Debtors’ billing system and other facilities. The Third-Party Programs that deliver electricity serve over  
19 3 million customers and are anticipated to account for approximately 40% of the electricity load in the  
20 Debtors’ territory.

21 **2. Funding and Costs of the Third-Party Programs**

22 The Debtors receive fees and revenues from Customers of the third parties to reimburse the  
23 Debtors for their costs of delivering the electricity and natural gas over the Debtors’ utility transmission  
24

25 <sup>18</sup> PG&E’s Electric Preliminary Statement Part S (Hazardous Substance Mechanism), [https://www.pge.com/tariffs/assets/pdf/tariffbook/ELEC\\_PRELIM\\_S%20\(Prelim\).pdf](https://www.pge.com/tariffs/assets/pdf/tariffbook/ELEC_PRELIM_S%20(Prelim).pdf); and PG&E’s Electric  
26 Preliminary Statement DB (Nuclear Decommissioning Adjustment Mechanism), [https://www.pge.com/tariffs/assets/pdf/tariffbook/ELEC\\_PRELIM\\_DB.pdf](https://www.pge.com/tariffs/assets/pdf/tariffbook/ELEC_PRELIM_DB.pdf).

27 <sup>19</sup> Such statutes include Cal. Pub. Util. Code §§ 365.1 and 366 (direct access), 366.2 (community  
choice aggregation), and Cal. Water Code § 80110a.

1 and distribution system and for acting as servicing and billing agent. In addition to amounts owed to the  
2 Debtors from such Customers, the Debtors also collect from such Customers amounts owed to the third  
3 parties for the electricity and natural gas supplied by the third parties (the “**TPP Funds**”). Remittance  
4 of such pass-through revenues by the Debtors to the third parties in connection with the Third-Party  
5 Programs (the “**TPP Costs**”) ranges from daily to weekly. Based on historical averages, on a monthly  
6 basis the aggregate amount of the TPP Funds received by the Debtors is approximately \$181.2 million.  
7 As of the Petition Date, the Debtors estimate that approximately \$52.6 million in TPP Costs are payable  
8 to third parties, all of which the Debtors estimate will come due within thirty (30) days after the Petition  
9 Date.

10           **E. The GHG Credit Programs**

11           **1. The GHG Credit Programs Described**

12 Pursuant to statutes enacted by the California Legislature and regulations issued by the California  
13 Air Resources Board,<sup>20</sup> California businesses that emit GHGs, such as the Debtors, are mandated to  
14 reduce their emissions of GHGs and provide credits to Customers to give them incentives to do the same.  
15 For example, the Debtors issue semi-annual California Climate Credits for electric Customers and annual  
16 California Climate Credits for natural gas Customers (“**CC Credits**”). In addition, the Debtors  
17 administer the Low Carbon Fuel Standard (“**LCFS**”) credit program. Pursuant to such program, the  
18 Debtors administer and distribute point of purchase rebates to Customers who switch from a gasoline-  
19 powered vehicle to an electric vehicle (“**LCFS Credits**”).

20           **2. Funding and Costs of the GHG Credit Programs**

21 Following approval by the CPUC, the projected costs associated with the CC Credits (the “**CC  
22 Costs**”) are funded through various surcharges and fees collected by the Debtors through rates from  
23 Customers and revenues accrued from the monetization of credits by the Debtors. The CPUC has

24

25           <sup>20</sup> Such statutes and regulations include Assembly Bill (AB) 32, the California Air Resources Board  
26 regulations implementing AB 32, and the Low Carbon Fuel Standard regulation issued by the  
27 California Air Resources Board. *See* California Global Warming Solutions Act of 2006, Cal. Health &  
28 Safety Code §§ 38500, *et. seq.*; Low Carbon Fuel Standard (LCFS), Cal. Code of Regs. tit. 17,  
§§ 95480- 95503. Decisions of the California Public Utilities Commission authorize PG&E to issue  
CC Credits (as defined below) to retail customers under AB 32, and also authorize PG&E to  
participate in the LCFS (as defined below) program and distribute LCFS Credits to customers.

1 approved approximately \$443.1 million in CC Costs for the Debtors' issuance of CC Credits for 2019.  
2 The LCFS Credits provided to Customers are funded by the Debtors' monetization of LCFS credits  
3 earned by the Debtors from the ARB for their GHG compliance. The Debtors sell their LCFS credits in  
4 the open market to other GHG emitting businesses who buy them to offset their own compliance costs  
5 (the funds collected through rates and revenues from the monetization of CC Credits and LCFS credits  
6 collectively, the "**GHG Funds**" and the CC Credits and LCFS Credits provided using the GHG Funds  
7 including administrative costs, the "**GHG Costs**"). The GHG Funds are typically tracked by the Debtors  
8 through regulatory "balancing accounts" required by the CPUC for legal ratemaking purposes. As of  
9 the Petition Date, the Debtors estimate that approximately \$128.9 million in GHG Costs are accrued and  
10 unpaid. The Debtors do not expect that any of such amounts will come due within thirty (30) days after  
11 the Petition Date.

12           **F. The Customer Support Programs**

13           **1. The Customer Support Programs Described**

14           In the ordinary course of business, the Debtors support Customers through a variety of product  
15 offerings, which provide the Debtors with additional revenue to offset and reduce the rates paid by gas  
16 and electric Customers. For example, the Debtors license and lease space on the Debtors' assets (such  
17 as towers, conduit, and fiber network), to enable Customers to install equipment to provide  
18 telecommunications services in California. If Customers request installation of or modifications to such  
19 equipment, the Debtors engage with contractors and other vendors to perform such work for the benefit  
20 of the Customers. The Debtors also support private and public sector Customers seeking sustainable  
21 solutions by acting as a general contractor for Customer projects that range from replacing heating  
22 systems for large institutional or government Customers to replacing street lights with LED lights for  
23 municipalities. The Debtors subcontract such projects to completion. In 2018, the Debtors estimate that  
24 they supported more than 100 Customers through their Customer Support Programs.

25           **2. Funding and Costs of the Customer Support Programs**

26           The subcontractors and other vendors engaged by the Debtors to complete Customer Support  
27 Program projects perform their work under work authorizations with the Debtors. The Debtors receive  
28 invoices from the subcontractor first and then invoice the Customer for the same amount plus a markup.

If the Debtors do not remit payment to a subcontractor, the subcontractor may refuse to complete the project and may result in the imposition of liens by the contractor on Customer property. Such refusal could jeopardize the Customer's project, the Debtors' relationship with the Customer, any financing obtained by the Customer to fund the project and, as a result, the Debtors' revenue associated therewith. In addition, a contractor's refusal to perform could result in a breach of the Debtors' performance obligations under its agreement with the Customer. As of the Petition Date, the Debtors estimate that they owe approximately \$12.7 million to contractors and vendors pursuant to the Customer Support Programs (the "**CSP Costs**"), and that approximately \$5.3 million will come due within thirty (30) days after the Petition Date. As noted above, all of such amounts will be recovered from Customers.

#### **IV. BASIS FOR RELIEF REQUESTED**

The operation of the Debtors' businesses requires the continuation of the Customer Programs, including the Deposit and Reimbursement Programs, the Public Purpose Programs, the Environmental Cleanup Programs, the Third-Party Programs, the GHG Credit Programs, and the Customer Support Programs during these Chapter 11 Cases. As set forth above, a substantial portion of the Customer Programs are mandated pursuant to various federal and state laws, regulations, and tariffs, and failure to continue to honor and maintain the Customer Programs could materially disrupt the Debtors' operations.

##### **A. The Court has Authority to Grant the Requested Relief under Sections 363(b) and 105(a) of the Bankruptcy Code**

Section 363(b) of the Bankruptcy Code provides, in relevant part, that "[t]he [debtor], after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). Under section 363 of the Bankruptcy Code, a court may authorize a debtor to pay certain prepetition claims where a sound business purposes exists for doing so. *See In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989). The business judgment rule is satisfied where "the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company." *See, e.g., Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.)*, 147 B.R. 650, 656 (S.D.N.Y. 1992) (*quoting Smith v. Van Gorkom*, 488 A.2d 858, 872 (Del. 1985)); *see also FDIC v. Castetter*, 184 F.3d 1040, 1043 (9th Cir. 1999) (the business judgment rule "requires directors to perform

their duties in good faith and as an ordinarily prudent person in a like circumstance would"). "Where the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor's conduct." *Comm. of Asbestos-Related Litigants v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986). Courts in this District have consistently declined to interfere with corporate decisions absent a showing of bad faith, self-interest, or gross negligence, and have upheld a board's decisions as long as such decisions were made in good faith. *See Scouler & Co., LLC v. Schwartz*, No. 11-CV-06377 NC, 2012 WL 1502762, at \*4 (N.D. Cal. Apr. 23, 2012); *Berg & Berg Enters., LLC v. Boyle*, 178 Cal. App. 4th 1020, 1045 (2009).

The Court may also rely on its equitable powers under section 105 of the Bankruptcy Code to grant the relief requested in this Motion. Section 105(a) of the Bankruptcy Code empowers the Court to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a). Accordingly, the Court may authorize the Debtors to continue to honor and maintain the Customer Programs, as well as to pay any prepetition amounts owed with respect thereto, because such relief is necessary for the Debtors to carry out their fiduciary duties under section 1107(a) of the Bankruptcy Code. Under section 1107(a) of the Bankruptcy Code "the debtor in possession has the same fiduciary duties and liabilities as a Trustee. When the debtor is a corporation, corporate officers and directors are considered to be fiduciaries both to the corporate debtor in possession and to the creditors." *Holta v. Zerbetz (In re Anchorage Nautical Tours, Inc.)*, 145 B.R. 637, 643 (B.A.P. 9th Cir. 1992); *see also Hansen v. Finn (In re Curry & Sorensen, Inc.)*, 57 B.R. 824, 828 (B.A.P. 9th Cir. 1986) ("[T]he debtor's directors bear essentially the same fiduciary obligation to creditors and shareholders as would a trustee for a debtor out of possession.").

Numerous Courts have acknowledged that payment of prepetition obligations, irrespective of statutory priorities, may be necessary to realize the objectives of the Bankruptcy Code, such as the preservation and enhancement of the value of a debtor's estate for the benefit of all creditors and other stakeholders. *See, e.g., Czyzewski v. Jevic Holding Corp.*, 137 S. Ct. 973, 985 (2017) (noting that courts have approved distributions that are not consistent with ordinary priority rules in instances where significant Code-related objectives, such as enabling a successful reorganization, would be served and

listing examples such as “ ‘first-day’ wage orders that allow payment of employees’ prepetition wages, ‘critical vendor’ orders that allow payment of essential suppliers’ prepetition invoices, and ‘roll-ups’ that allow lenders who continue financing the debtor to be paid first on their prepetition claims”); *Miltenberger v. Logansport, C&S W.R. Co.*, 106 U.S. 286, 312 (1882) (payment of pre-receivership claim prior to reorganization permitted to prevent “stoppage of the continuance of [crucial] business relations”); *In re Just For Feet, Inc.*, 242 B.R. 821, 826 (D. Del. 1999) (allowing payment of prepetition claim because debtor could not survive without maintaining customer relationship); *In re Fin. News Network, Inc.* 134 B.R. 732, 736 (Bankr. S.D.N.Y. 1991) (payment of prepetition claims allowed if “critical to the debtor’s reorganization”); *In re NVR L.P.*, 147 B.R. 126, 128 (Bankr. E.D. Va. 1992) (holding that “proponent of the payment must show substantial necessity”); *In re Eagle-Picher Indus., Inc.*, 124 B.R. 1021, 1023 (Bankr. S.D. Ohio 1991) (stating that payment must be “necessary to avert a serious threat to the Chapter 11 process”).

Although there is a Ninth Circuit decision which fails to recognize the grant of authority given by the Bankruptcy Code to elevate certain prepetition payments over others, that case is easily distinguishable from these Chapter 11 Cases and the relief sought herein, as the prepetition payments at issue there were made by the debtor without notice, hearing, or authorization from the Bankruptcy Court. *B & W Enters., Inc. v. Goodman Oil Co. (In re B & W Enters., Inc.)*, 713 F.2d 534, 535 (9th Cir. 1983). Furthermore, although the *B & W* court noted that the “necessity of payment” doctrine was established in railroad reorganization cases, *id.* at 535, numerous courts have extended the doctrine beyond the railroad reorganization context. See, e.g., *In re Structurlite Plastics Corp.*, 86 B.R. 922, 931 (Bankr. S.D. Ohio 1988) (“a bankruptcy court may exercise its equity powers under § 105(a) [of the Bankruptcy Code] to authorize payment of pre-petition claims where such payment is necessary to ‘permit the greatest likelihood of survival of the debtors and payment of creditors in full or at least proportionately’ ”); *In re Gulf Air, Inc.*, 112 B.R. 152, 153 (Bankr. W.D. La. 1989) (finding that payment of prepetition wage and benefit obligations was in the best interest of creditors and necessary for the successful reorganization of the debtor and granting the debtor’s motion to pay prepetition employee expenses); *Mich. Bureau of Workers’ Disability Compensation v. Chateaugay Corp. (In re Chateaugay Corp.)*, 80 B.R. 279, 285 (S.D.N.Y. 1987) (finding that Bankruptcy Courts have the authority to

1 authorize the debtor to pay certain prepetition claims in preplan stages of a reorganization).

2 Moreover, since *B & W*, the Ninth Circuit has noted in other instances that certain prepetition  
3 payments should be authorized regardless of whether they are priority payments under the Bankruptcy  
4 Code. *See Burchinal v. Cent. Wash. Bank (In re Adams Apple, Inc.)*, 829 F.2d 1484, 1490 (9th Cir.  
5 1987). In that case, in rejecting the appellants' argument that the cross-collateralization clause in a  
6 financing agreement violated the "fundamental tenet of bankruptcy law that like creditors must be treated  
7 alike," the Court of Appeals noted that the argument was "flawed because the fundamental tenet conflicts  
8 with another fundamental tenet – rehabilitation of debtors, which may supersede the policy of equal  
9 treatment." *Id.* The Ninth Circuit further stated that:

10 [c]ases have permitted unequal treatment of pre-petition debts when  
11 necessary for rehabilitation, in such contexts as (i) pre-petition wages to key  
12 employees; (ii) hospital malpractice premiums incurred prior to filing;  
13 (iii) debts to providers of unique and irreplaceable supplies; and  
14 (iv) peripheral benefits under labor contracts.

15 *Id.*

16 Numerous Courts within the Ninth Circuit have followed the reasoning of *In re Adams Apple* in  
17 holding that the payment of certain prepetition claims is not categorically barred when the payments  
18 promote the rehabilitation of the debtor. *See, e.g., In re Petit Oil Co.*, No. 13-47285, 2015 WL 6684225,  
19 at \*8 (Bankr. W.D. Wash. Oct. 22, 2015) (citing *In re Adams Apple Inc.* for proposition that it "is  
20 permissible to treat prepetition debts unequally when necessary for rehabilitation"); *Gordon v. Hines (In  
21 re Hines)*, 147 F.3d 1185, 1191 (9th Cir. 1998) (applying "essentially a doctrine of necessity" to provide  
22 for the payment of the fees of debtor's counsel in chapter 7 cases because without this right the "entire  
23 [chapter 7] system would suffer a massive breakdown"). Furthermore, several courts within this Circuit  
24 have granted relief substantially similar to that sought herein. *See, e.g., In re Laurel Fertility Care*, Case  
25 No. 14-30403-DM-11 (Bankr. N.D. Cal. May 21, 2014) (approving motion for authority to pay  
26 prepetition critical vendor); *In re Montgomery-Sansome, LP*, Case No. 17-30515-HLB (Bankr. N.D. Cal.  
27 Sept. 20, 2017) (approving motion for authority to pay prepetition critical vendor and wage claim); *In re  
28 Sheikh Shoes, LLC*, Case No. 17-24626-VZ (Bankr. C.D. Cal. Dec. 1, 2017), ECF No. 70 (approving  
payment of prepetition customer program obligations); *In re Styles for Less Inc.*, Case No. 17-14396-  
MW (Bankr. C.D. Cal. Nov. 15, 2017), ECF No. 68 (same); *In re Cornerstone Apparel, Inc.*, Case No.

1 17-17292-VZ (Bankr. C.D. Cal. Aug.11, 2017), ECF No. 110 (same); *In re Round Table Pizza Inc.*, Case  
2 No. 11-41431-RE (Bankr. N.D. Cal. Feb. 11, 2011), ECF No. 31 (same).

3 As indicated above, most of the Customer Programs are the subject of statutory or regulatory  
4 mandates. Additionally, with respect to the Public Purpose Programs and the GHG Credit Programs,  
5 California statutes and regulations mandate that all PPP Funds and GHG Funds be set aside for the  
6 express purpose of funding public interest programs and issuing credits to Customers that are designed  
7 to benefit the broader public interests. Failure to fund the Public Purpose Programs and the GHG Credit  
8 Programs with the proceeds specifically designated therefor, including payment of prepetition costs,  
9 would be in direct conflict with regulatory requirements and unwarranted under the circumstances. With  
10 respect to the Environmental Cleanup Programs, any suspension or delay in administering the  
11 Environmental Cleanup Programs is contrary to public health and welfare and may exacerbate not only  
12 existing circumstances but the ultimate costs of cleanup as well.

13 Failure to provide third party providers with revenue owed to them under the Third Party  
14 Programs for purchases of their electricity and natural gas would improperly interfere with their  
15 relationships with their customers and could jeopardize the continued supply of electricity and natural  
16 gas to their customers who rely on the same. With over 3 million customers serviced with electricity  
17 pursuant to the Third-Party Programs—which is anticipated to account for approximately 40% of the  
18 electricity load in the Debtors’ territory in 2019—the normal and uninterrupted remittance of Customer  
19 payments through the Debtors to CCAs, ESPs, CTAs and DWR is of the utmost importance in order for  
20 such entities to meet their obligations to such customers and their suppliers, contractors, and lenders.

21 Failure to remit payments to contractors and other vendors in connection with the Customer  
22 Support Programs could result in the suspension of Customer projects and imposition of liens by the  
23 contractors on Customer property and jeopardize the Debtors’ relationship with Customers and any  
24 financing obtained by Customers to fund their projects and, as a result, the Debtors’ revenue associated  
25 therewith. In addition, a contractor’s refusal to perform could result in a breach of the Debtors’  
26 performance obligations under their Customer agreements.

27 Furthermore, because of the unique nature and scale of their business operations, the Debtors’  
28 Customers will be particularly vulnerable to any suspension of the Debtors’ obligations under the

1 Deposit and Reimbursement Programs, and the ripple effects of any suspension could be far reaching.  
2 If lower-income residential Customers, for example, are unable to receive their Security Deposit  
3 Refunds, they may be deprived of necessary funds and be subject to undue hardship. Customers who  
4 have budgeted for the use of the Security Deposit Refunds may be unable to meet their day-to-day  
5 financial commitments, including, for Customers who have left the utility's service area, establishing  
6 credit with another utility using the funds from their Security Deposit Refund.

7 Failure to pay the Customer Program Obligations will threaten the viability of the Customer  
8 Programs and undermine public confidence in the Debtors. Moreover, the Debtors' prospects for a  
9 successful reorganization will be significantly undermined if they are in violation of their statutory and  
10 regulatory mandates at the outset of their Chapter 11 Cases. Accordingly, honoring all Customer  
11 Program Obligations, including payment of Security Deposit Refunds, MLX Deposit Refunds, UG  
12 Costs, OCP Costs, PPP Costs, ECP Costs, TPP Costs, GHG Costs, and CSP Costs in the ordinary course  
13 as they come due, including all prepetition amounts, is a prudent and sound exercise of the Debtors'  
14 business judgment and should be approved.

15 **B. Funds Collected for the Deposit and Reimbursement Programs, Decommissioning  
16 Trusts, and Third-Party Programs Are Not Property of the Debtors' Estates**

17 The funds collected for the Deposit and Reimbursement Programs, Decommissioning Trusts, and  
18 the Third-Party Programs are likely not property of the Debtors' estates as they are collected from third  
19 parties and held in trust for payments and obligations in connection with such programs for the benefit  
20 of ratepayers and third parties. Section 541(d) of the Bankruptcy Code provides, in relevant part, that  
21 “[p]roperty in which the debtor holds, as of the commencement of the case, only legal title and not an  
22 equitable interest . . . becomes property of the estate under subsection (a)(1) or (2) of this section only  
23 to the extent of the debtor's legal title to such property, but not to the extent of any equitable interest in  
24 such property that the debtor does not hold.” 11 U.S.C. § 541(d).

25 Funds that a debtor holds in trust are not property of the debtor's bankruptcy estate whether the  
26 trust is statutory or constructive. *Official Comm. of Unsecured Creditors v. Columbia Gas Sys. Inc. (In  
27 re Columbia Gas Sys. Inc.)*, 997 F.2d 1039, 1054 (3rd Cir. 1993). Courts have previously held that  
28 customer refunds and surcharge-related funds were held in trust by the debtor, and thus, were not

1 property of its bankruptcy estate. *Id.* at 1062. As noted above, a number of statutes and regulatory  
2 rulings require the Debtors to collect the funds in connection with the Deposit and Reimbursement  
3 Programs, Decommissioning Trusts, and Third-Party Programs and hold them in trust until final  
4 remittance to the third parties providing support and services in connection with the Deposit and  
5 Reimbursement Programs, Decommissioning Trusts, and to third party non-utilities in connection with  
6 the Third-Party Programs. Although the statutory and regulatory framework that confers “trust” status  
7 to the funds provided in connection with the Deposit and Reimbursement Programs, Decommissioning  
8 Trusts and the Third-Party Programs does not explicitly describe them as “trust funds,” when a statute  
9 clearly manifests the intent that property be held in trust, the “explicit use of the word ‘trust’ or any other  
10 particular language, is not necessary.” *Moose v. United States*, 674 F.2d 1277, 1281 (9th Cir. 1982).  
11 Finally, even in the absence of a “statutory” trust, the legislative history of section 541(d) of the  
12 Bankruptcy Code makes clear that when a debtor collects money on behalf of another, this money is  
13 held in constructive trust for the intended eventual recipient even absent any misconduct. *See H.R. Rep.*  
14 No. 95–595, 95th Cong., at 368 (1977), *as reprinted in* 1978 U.S.C.C.A.N. 5963, 6324. Finally, with  
15 respect to the Decommissioning Trusts, such funds are explicitly held in externally managed, segregated  
16 funds and are, therefore, not property of the Debtors’ estates. *See In re Columbia Gas Sys. Inc.*, 997  
17 F.2d at 1059 (finding the beneficiary, not the trustee, has equitable interest in trust property).

18           **C. Honoring the Security Deposit Refunds and the MLX Deposit Refunds Will Affect  
19           Only the Timing of Payments**

20           A significant portion of the Security Deposit Refunds and MLX Deposit Refunds owed to  
21 residential Customers may be entitled to priority status pursuant to section 507(a)(7) of the Bankruptcy  
22 Code, which provides for priority treatment for:

23           allowed unsecured claims of individuals, to the extent of \$2,850 for each  
24 such individual, arising from the deposit, before the commencement of the  
case, of money in connection with the purchase, lease, or rental of property,  
or the purchase of services, for the personal, family, or household use of  
such individuals, that were not delivered or provided.

25           11 U.S.C. § 507(a)(7).

26           Courts frequently authorize early payment of priority claims when such early payment is intended  
27 to prevent some harm or to procure some benefit for the estate. *See, e.g., In re CEI Roofing, Inc.*, 315  
28

B.R. 50, 60-61 (Bankr. N.D. Tex. 2004) (finding that authorization of early payment of priority claims does not trigger concerns of either upsetting priority scheme of Bankruptcy Code or of unfair discrimination); *In re CoServ, L.L.C.*, 273 B.R. 487, 493-93 (Bankr. N.D. Tex. 2002) (implying that Bankruptcy Court may authorize early payment of prepetition priority claims in instances where nonpayment could impair debtor's ability to operate); *In re Equalnet Commc'n Corp.*, 258 B.R. 368, 370 (Bankr. S.D. Tex. 2000) (stating that court may authorize pre-plan payment of priority claims because “[t]he need to pay these claims in an ordinary course of business time frame is simple common sense”). Furthermore, although the section 507(a)(7) priority applies in cases where services were otherwise “not delivered or provided,” courts have held that the section 507(a)(7) priority is applicable with respect to security deposits, even when residential services related to the deposit commenced prior to the bankruptcy filing. See *In re Shay*, Case No. 2:12-BK-26069-RK, 2017 WL 262040, at \*8 (Bankr. C.D. Cal. Jan. 18, 2017) (finding that 507(a)(7) priority existed with respect to a tenant’s security deposit notwithstanding the fact that the tenant took possession of the property well before the petition date); see also *In re River Vill. Assocs.*, 161 B.R. 127, 133–34 (Bankr. E.D. Pa. 1993), *aff’d*, 181 B.R. 795 (E.D. Pa. 1995) (holding that the priority assigned to security deposits would be unnecessarily limited if only available for scenarios where a landlord-debtor filed for bankruptcy between the time the security deposit was paid, but before the tenant took possession of the rental premises).

To the extent the Security Deposit Refunds<sup>21</sup> and MLX Deposit Refunds are priority claims, they must be paid in full under any plan of reorganization (up to the statutory cap) before any of the Debtors’ general unsecured obligations may be satisfied. For example, the Debtors estimate that they will need to refund, on average, approximately \$250 in Security Deposits per residential Customer on a monthly

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<sup>21</sup> In addition, certain of the Security Deposits are likely subject to recoupment by Customers. Recoupment is an equitable doctrine that permits creditors to “exempt[ ] a debt from the automatic stay when the debt is inextricably tied up in [a] post-petition claim.” *Sims v. U.S. Dep’t of Health & Human Servs. (In re TLC Hosps., Inc.)*, 224 F.3d 1008, 1011 (9th Cir. 2000) (quoting *United States v. Consumer Health Servs. of Am., Inc.* 108 F.3d 390, 395 (D.C. Cir. 1997)). Recoupment is available to creditors if the claims or rights giving rise to a creditor’s recoupment claim arise from the “same transaction or occurrence” that give rise to a liability sought to be enforced by the bankruptcy estate. *TLC Hosps.*, 224 F.3d at 1011. As the Security Deposits were furnished to the Debtors for the specific purpose of mitigating the Debtors’ risk with respect to satisfaction of their future claims against Customers, they may be subject to recoupment by creditors and the Court should authorize the Debtors to pay Security Deposit Refunds as they come due, in the ordinary course of business.

1 basis, well below the statutory cap. Accordingly, the proposed relief will affect only the timing such  
2 portion of payments and will not prejudice the rights of any general unsecured creditor or other party in  
3 interest. Therefore, the Court should grant the Debtors authority to issue the Security Deposit Refunds  
4 and MLX Deposit Refunds to Customers in the ordinary course.

5 For the foregoing reasons, authorizing the Debtors to continue to honor and perform under the  
6 Customer Programs and to pay all Customer Program Obligations, whether such obligations arose prior  
7 to or after the Petition Date, is necessary, appropriate, and in the best interests of the Debtors, their  
8 estates, and all other parties in interest in these Chapter 11 Cases.

9 **V. BANKS SHOULD BE AUTHORIZED TO RECEIVE, PROCESS, HONOR, AND PAY  
10 CHECKS ISSUED AND TRANSFERS REQUESTED TO PAY THE CUSTOMER  
PROGRAM OBLIGATIONS**

11 The Debtors further request that the Court authorize, but not direct, banks and financial  
12 institutions (the “Banks”) to receive, process, honor, and pay, to the extent of funds on deposit, any and  
13 all checks issued or to be issued and electronic funds transfers requested or to be requested by the Debtors  
14 relating to the Customer Programs or Customer Program Obligations. The Debtors also seek authority,  
15 but not direction, to issue new postpetition checks or effect new postpetition electronic funds transfers  
16 in replacement of any checks or transfer requests on account of any Customer Program Obligations  
17 dishonored or rejected as a result of the Chapter 11 Cases.

18 **VI. RESERVATION OF RIGHTS**

19 Nothing contained herein is intended to be or shall be construed as (a) an admission as to the  
20 validity of any claim against the Debtors, (b) a waiver of the Debtors’ or any appropriate party in  
21 interest’s rights to dispute any claim, or (c) an approval or assumption of any agreement, contract,  
22 program, policy, or lease under section 365 of the Bankruptcy Code. Likewise, if the Court grants the  
23 relief sought herein, any payment made pursuant to the Court’s order is not intended to be and should  
24 not be construed as an admission to the validity of any claim or a waiver of the Debtors’ rights to dispute  
25 such claim subsequently.

26 **VII. IMMEDIATE ENTRY OF AN ORDER PURSUANT TO BANKRUPTCY RULE 6003**

27 Bankruptcy Rule 6003 provides that, to the extent relief is necessary to avoid immediate and  
28 irreparable harm, a Bankruptcy Court may issue an order granting “a motion to use, sell, lease, or

otherwise incur an obligation regarding property of the estate, including a motion to pay all or part of a claim that arose before the filing of the petition” before twenty-one (21) days after filing of the petition. Here, payment of the Customer Program Obligations is necessary to avoid immediate and irreparable harm because (a) failure to make such payments may cause the Debtors to violate statutory and regulatory mandates, (b) failure to pay the Security Deposit Refunds, and MLX Deposit Refunds, may inflict a significant hardship on the Debtors’ Customers, (c) failure to pay the prepetition OCP Costs, UG Costs, PPP Costs, ECP Costs, GHG Costs, and CSP Costs will threaten the viability of the UG Programs, Other Customer Programs, Public Purpose Programs, Environmental Cleanup Programs, GHG Credit Programs, and Customer Support Programs and undermine public confidence in the Debtors, and (d) failure to pay the pass-through TPP Costs will threaten the viability of certain third party entities and the continued supply of electricity and natural gas to certain customers. Accordingly, the Debtors have satisfied the requirements for immediate entry of an order granting the relief requested herein pursuant to Bankruptcy Rule 6003.

### **VIII. REQUEST FOR BANKRUPTCY RULE 6004 WAIVERS**

The Debtors request a waiver of the notice requirements under Bankruptcy Rule 6004(a) and any stay of the order granting the relief requested herein pursuant to Bankruptcy Rule 6004(h). As explained above, the relief requested herein is necessary to avoid immediate and irreparable harm to the Debtors. Accordingly, ample cause exists to justify the waiver of the notice requirements under Bankruptcy Rule 6004(a) and the fourteen-day stay imposed by Bankruptcy Rule 6004(h), to the extent such notice requirements and stay apply.

### **IX. NOTICE**

Notice of this Motion will be provided to (i) the Office of the United States Trustee for Region 17 (Attn: James L. Snyder, Esq. and Timothy Laffredi, Esq.); (ii) the Debtors’ fifty (50) largest unsecured creditors on a consolidated basis; (iii) the Securities and Exchange Commission; (iv) the Internal Revenue Service; (v) the Office of the California Attorney General; (vi) the California Public Utilities Commission; (vii) the Nuclear Regulatory Commission; (viii) the Federal Energy Regulatory Commission; (ix) the Office of the United States Attorney for the Northern District of California; (x) counsel for the agent under the Debtors’ proposed debtor in possession financing facilities; (xi) the

1 Banks; and (xii) those persons who have formally appeared in these Chapter 11 Cases and requested  
2 service pursuant to Bankruptcy Rule 2002. Based on the urgency of the circumstances surrounding this  
3 Motion and the nature of the relief requested herein, the Debtors respectfully submit that no further  
4 notice is required.

5 No previous request for the relief sought herein has been made by the Debtors to this or any other  
6 court.

7 WHEREFORE the Debtors respectfully request entry of an order granting the relief requested  
8 herein and such other and further relief as the Court may deem just and appropriate.  
9

10 Dated: January 29, 2019

**WEIL, GOTSHAL & MANGES LLP**  
**KELLER & BENVENUTTI LLP**

13 By: /s/ Tobias S. Keller  
14 Tobias S. Keller

15 *Proposed Attorneys for Debtors  
and Debtors in Possession*